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OFFICE OF PETITIONS

In re Application of :
Chen, et al, :
Application No. 08/510,740 : DECISION
Filed: 2 August, 1995 :
Attorney Docket No. B-2750-FWC : .

This is a decision on the petition, filed on 15 May, 2008, considered as a petition under 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

BACKGROUND

The record reflects that:

- Applicant, failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due (copy enclosed) mailed on 6 May, 2002, with reply due under a non-extendable deadline on or before 6 August, 2002;
- the application went abandoned after midnight 6 August, 2002;
- the Office mailed the Notice of Abandonment on 21 January, 2004;
- on 1 March, 2004, Petitioner filed a one-page petition with, *inter alia*, an averment that of non-receipt and suggestion of supporting documentation, but none in evidence, and

Petitioner failed to make the recitation of search and failed to provide a copy of the docket papers for the instant application as well as a copy of the due-date calendar/docket for 6 August, 2002, all as required and as is set forth in detail in the guidance at the Commentary in MPEP §711.03(c)(I)(A) and (B). Moreover, the record evidences no action of diligent inquiry by Petitioner as to this matter: between 11 December, 2001, and the filing of the instant petition—Petitioner's unsupported allegations of filing of a Notice of Change of Address. Petitioner provides no Office-generated documentation of receipt (FAX Receipt Acknowledgement over Office letterhead), nor, in fact, does Petitioner provide a copy of the two (2) Notices averred to have been transmitted; or since the filing of the original petition—thus, the petition was dismissed on 7 April, 2008.

- The instant petition was filed on 15 May, 2008, with fee, a reply in the form of fees due and drawings, and made a statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 C.F.R. §10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). **In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional, Petitioner must notify the Office.**

The record (including the petitions filed on 1 March, 2004, and 15 May, 2008) does not necessitate a finding that the delay between midnight 6 August, 2002 (the date of abandonment), and 15 May, 2008 (the date of filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/Counsel Jiawei Huang (Reg. No. 43,330) when accepting Petitioner's representation that the delay in filing the response was unintentional.¹

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.²

¹ See: Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

² See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Application No. 08/510,740

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

As to Allegations of
Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(b) is granted.

The instant application is released to Publications Branch to be processed into a patent in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Publications Branch in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the Publications Branch where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2³) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).


/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

³ The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.